

REMARKS

Applicants hereby provisionally elects Group II, Claims 44, 45, 48-50 and 51-57, for examination, with traverse.

The Examiner has required restriction between Claims 27-43, 48, 49, 50 and 54-57 (Group I), drawn to protein and methods of use; Claims 44, 45, 48-50 and 51-57 (Group II), drawn to DNA and methods of use; and Claims 46-50 and 54-57 (Group III) drawn to antibody and methods of use. Restriction was required because the Examiner alleges that each group is drawn to a different special technical feature. Based upon this premise, the Examiner contends that the DNA (Group II) possesses a special technical feature that is different than the protein (Group I), and therefore are separate inventions.

Applicants respectfully traverse the Examiner's position. MPEP 803 recites that if "the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." Applicants submit that this is the situation in the present application because when the Examiner performs a search for the DNA sequence that encodes a composition comprising at least one protein from a virulent strain of Mycobacterium that is not found in an avirulent strain, he will simultaneously locate the protein. Thus, there is no undue burden on the examiner to search the DNA sequence encoding the protein and the protein which it encodes. Additionally, it is requested that claims 51 and 52 be included in Group II and examined with the claims of Group II as these claims are directed to a use of the DNA.

Applicants respectfully request that the examiner reconsider his position regarding this restriction requirement and examine the claims of Groups I and II as one invention for the reasons set forth above. It is believed that the alleged separate inventions are related and should be examined as one invention and that claims 27-45 and 48-62 should be examined as one invention.

Applicants, of course, reserve the right to file a divisional application covering the subject matter of the non-elected claims. Receipt of the initial Office Action on the merits is awaited.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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FOLEY & LARDNER LLP

Customer Number: 22428

Telephone: (202) 672-5542

Facsimile: (202) 672-5399

By Jayne A. Huleatt

Jayne A. Huleatt

Attorney for Applicant

Registration No. 34,485